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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re N.K., a Person Coming Under the  
Juvenile Court Law.

B262659  
(Los Angeles County  
Super. Ct. No. DK07567)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

ANNIE K.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Daniel Zeke Zeidler, Judge. Affirmed in part and reversed in part with directions.

Donna Balderston Kaiser, under appointment for the Court of Appeal, for Defendant and Appellant.

Mark J. Saladino, County Counsel, Dawyn R. Harrison, Assistant County Counsel, and Peter Ferrera, Principal Deputy County Counsel, for Plaintiff and Respondent.

Annie K. (Mother) appeals from the juvenile court's dispositional order entered after it determined her drug use, in part, created dependency jurisdiction over her son, N.K. (Child), now more than a year old. Mother argues the finding was not supported by substantial evidence and therefore the attendant orders requiring her to submit to drug testing and counseling should be reversed. We agree with Mother and reverse the order, but only with respect to the drug-based jurisdictional finding and attendant dispositional orders.

### **BACKGROUND**

In April 2014, after a mandated reporter informed the Los Angeles County Department of Children and Family Services (DCFS) that Mother tested positive for marijuana when she was admitted to the hospital to give birth to Child, DCFS began to investigate Child's well-being. Despite Mother's positive drug test at the time of Child's birth, Child tested negative for drugs when born. A few months after Child's birth, in June 2014 DCFS received a second referral from an anonymous caller, alleging Child was at risk of physical and emotional abuse due to Mother's live-in boyfriend's (Boyfriend) violent behavior and Mother's refusal to prosecute Boyfriend. According to the caller, during a recent argument Boyfriend shoved and bit Mother and threw a shoe at her that nearly struck Child's crib. Just three days later, DCFS received a third referral regarding Child's well-being. While Child was present, Boyfriend allegedly threatened to cut Mother's throat. After being called to the scene, law enforcement had to taze Boyfriend to subdue him. Law enforcement offered Mother an emergency restraining order, but she refused.

In August 2014, Boyfriend, who suffers from multiple mental illnesses and has a long and violent criminal record, was unrelatedly incarcerated. During his incarceration, a DCFS worker explained to Mother the risks Boyfriend's violence posed to Child and warned Mother that if she continued to live with Boyfriend, Child may be removed from her home. In order to protect and maintain custody of Child, Mother agreed to seek refuge in a domestic violence shelter. In September 2014, however, Mother reneged and asked DCFS to detain Child with Child's maternal great-aunt (Aunt) so Boyfriend could

live with Mother. Mother indicated she and Boyfriend would “work together on regaining custody” of Child while Child was detained.

At the detention hearing on September 26, 2014, DCFS stated domestic violence and Mother’s drug use justified Child’s detention. As to Mother’s drug use, DCFS reported Mother admitted to using marijuana while pregnant; tested positive for marijuana at Child’s birth; admitted to using marijuana without a prescription for a number of years; admitted to using her prescription marijuana for nonprescribed purposes; and, on one occasion, had “possessed, used and was under the influence of marijuana” while caring for Child. DCFS did not substantiate or explain the claim regarding Mother’s care of Child while high other than submitting a positive drug test report. DCFS did not provide testimonial or other evidence. The court detained Child with Aunt and ordered monitored visits for Mother.

After Child was detained, Mother and Boyfriend were involved in another domestic violence incident. Boyfriend allegedly grabbed Mother by the throat and threatened to kill her with a knife. Although Boyfriend was arrested, Mother did not file a restraining order. Also during Child’s detention, Mother tested positive for marijuana several times, refused to take at least one drug test, failed to participate in DCFS’s recommended drug services, and admitted to being present while others used marijuana.

At the jurisdiction and disposition hearing on January 14, 2015, the court determined it had jurisdiction based on Mother’s drug use and domestic violence. At the recommendation of DCFS, the court ordered Mother to submit to random drug and alcohol testing and drug and alcohol counseling. Mother appealed.

## **DISCUSSION**

On appeal, Mother argues the finding that her drug use created jurisdiction and the orders for her to submit to drug and alcohol testing and counseling should be struck due to a lack of supporting substantial evidence. We agree.

We review jurisdictional findings and dispositional orders under a substantial evidence test. (*In re Jeannette S.* (1979) 94 Cal.App.3d 52, 58.) Under a substantial evidence test, an order “will be upheld if it is supported by substantial evidence” which is

“reasonable in nature, credible, and of solid value,” “even though substantial evidence to the contrary also exists and the trial court might have reached a different result had it believed other evidence.” (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.) Mother “has the burden of showing there is no evidence of a sufficiently substantial nature to support the finding or order.” (*Ibid.*)

DCFS failed to provide substantial evidence Mother’s drug use created jurisdiction. Although DCFS reported Mother had used marijuana during pregnancy and while she had custody, it provided no material facts Mother’s drug use harmed or even impacted Child. Child tested negative for drugs at birth. DCFS made no allegations Mother failed to provide for Child’s needs or protect him because she was high. In fact, other than a bare allegation, DCFS provided no evidence Mother was ever high while caring for Child. Even if Mother was using her prescription marijuana for nonprescribed purposes, there is no evidence this use affected her parenting abilities. (*In re Destiny S.* (2012) 210 Cal.App.4th 999, 1003 [“It is undisputed that a parent’s use of marijuana ‘without more,’ does not bring a minor within the jurisdiction of the dependency court”]; see also *In re Alexis E.* (2009) 171 Cal.App.4th 438, 452.) Only when a parent’s substance abuse prevents the parent from providing adequate care does the court obtain jurisdiction. (*In re Drake M.* (2012) 211 Cal.App.4th 754, 764–766.) No substantial evidence shows a causal nexus between Mother’s drug use and neglect of or injury to Child, and therefore Mother’s drug use did not create dependency jurisdiction. (Welf. & Inst. Code, § 300 [requiring a causal nexus between parent’s behavior and harm or risk of harm].)<sup>1</sup>

Mother argues that if her drug use did not create jurisdiction, the dispositional orders mandating drug testing and treatment should be reversed. We agree. DCFS not only provided no evidence that Mother’s drug use itself affected her parenting, it also provided no evidence her drug use incited, exacerbated, or prolonged the domestic violence, the other jurisdictional ground, between her and Boyfriend. It also provided no

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<sup>1</sup> Undesignated statutory references are to the Welfare and Institutions Code.

evidence her drug use prevented her from removing Child from Boyfriend's presence during his violent episodes. Under section 362, subdivision (c), the “program in which a parent or guardian is required to participate shall be designated to eliminate those conditions that led to the court's finding that the child is a person described by Section 300.” (*In re Nolan W.* (2009) 45 Cal.4th 1217, 1229.) In light of the fact DCFS provided no facts to show Mother's drug use did or would affect her care of Child, which would bring Child under section 300, we reverse the dispositional orders instructing Mother to submit to drug testing and counseling. (*In re Drake M.*, *supra*, 211 Cal.App.4th at pp. 762–763 [jurisdictional findings can be reached when dispositional orders rest on them]; see also *In re Basilio T.* (1992) 4 Cal.App.4th 155, 172–173 [order for parents to participate in substance abuse program reversed where there was no evidence parents had substance abuse problem].) While we reverse the drug testing conditions of the dispositional order, the remaining jurisdictional findings and orders stand as ordered below.

Although the specific drug-related jurisdictional finding and dispositional orders are reversed, the court still otherwise maintains jurisdiction, and all its other remaining orders stand. Mother has been “vindicated” that her drug use did not affect her parenting, but it “profits [her] nothing because, ‘[w]hen a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, a reviewing court can affirm the juvenile court's finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence.’” (*In re Andy G.* (2010) 183 Cal.App.4th 1405, 1415, fn. 6.) Mother does not challenge any of the court's other jurisdictional findings or dispositional orders. We uphold the court's other jurisdictional findings and dispositional orders based on DCFS's well-documented domestic violence grounds. There is substantial evidence to find Mother placed Child in continuing serious danger by her refusal to prioritize Child's safety and well-being over her violent relationship with Boyfriend. Mother does not need to comply with drug testing and counseling now, but the court's remaining jurisdictional findings and dispositional orders stand.

## **DISPOSITION**

The juvenile court's dispositional order to the extent the court took jurisdiction over Child based on Mother's drug use and required her to participate in drug testing and counseling is reversed. In all other respects, the order is affirmed. The matter is remanded to the juvenile court to enter a new dispositional order in conformity with this opinion.

NOT TO BE PUBLISHED.

LUI, J.

We concur:

ROTHSCHILD, P. J.

CHANEY, J.